

Office of the Secretary of Defense

§ 197.3

is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Procedures

§ 196.600 Notice of covered programs.

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the FEDERAL REGISTER a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

§ 196.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 32 CFR 195.7 through 195.12.

[65 FR 52885, Aug. 30, 2000]

PART 197—HISTORICAL RESEARCH IN THE FILES OF THE OFFICE OF THE SECRETARY OF DEFENSE (OSD)

Sec.

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APPENDIX A TO PART 197—EXPLANATION OF
FOIA EXEMPTIONS AND CLASSIFICATION
CATEGORIES

AUTHORITY: 5 U.S.C. 301, Executive Order 13526, 5 U.S.C. 552b, and Pub. L. 102-138.

SOURCE: 80 FR 65935, Oct. 28, 2015, unless otherwise noted.

§ 197.1 Purpose.

This part, in accordance with the authority in DoD Directive 5110.4, implements policy and updates procedures for the programs that permit authorized personnel to perform historical research in records created by or in the custody of Office of the Secretary of Defense (OSD) consistent with Executive Order 13526; DoD Manual 5230.30, "DoD Mandatory Declassification Review (MDR) Program" (available at <http://www.dtic.mil/whs/directives/correspdf/523030m.pdf>); 32 CFR part 286; 32 CFR part 310; DoD Manual 5200.01, "DoD Information Security Program" Volumes 1-4 (available at http://www.dtic.mil/whs/directives/correspdf/520001_vol1.pdf, http://www.dtic.mil/whs/directives/correspdf/520001_vol2.pdf, http://www.dtic.mil/whs/directives/correspdf/520001_vol3.pdf, and http://www.dtic.mil/whs/directives/correspdf/520001_vol4.pdf); 36 CFR 1230.10 and 36 CFR part 1236; DoD Directive 5230.09, "Clearance of DoD Information for Public Release" (available at <http://www.dtic.mil/whs/directives/correspdf/523009p.pdf>); and 32 CFR 197.5.

§ 197.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Defense Agencies, and the DoD Field Activities in the National Capital Region that are serviced by Washington Headquarters Services (WHS) (referred to collectively in this part as the "WHS-Serviced Components").

(b) All historical researchers as defined in § 197.3.

(c) Cabinet Level Officials, Former Presidential Appointees (FPAs) to include their personnel, aides and researchers, seeking access to records containing information they originated, reviewed, signed, or received while serving in an official capacity.

§ 197.3 Definitions.

The following definitions apply to this part:

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Access. The availability of or the permission to consult records, archives, or manuscripts. The ability and opportunity to obtain classified, unclassified, or administratively controlled information or records.

Electronic records. Records stored in a form that only a computer can process and satisfies the definition of a federal record, also referred to as machine-readable records or automatic data processing records (including email).

Historical researchers or requestors. A person approved to conduct research in OSD files for historical information to use in a DoD approved project (e.g., agency historical office projects, books, articles, studies, or reports), regardless of the person's employment status. Excluded are Military personnel assigned to OSD; OSD employees, contractors, and students conducting research in response to academic requirements.

Records (also referred to as federal records or official records). All books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government under federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the U.S. Government or because of the informational value of data in them.

§ 197.4 Policy.

It is OSD policy that:

(a) Pursuant to Executive Order 13526, anyone requesting access to classified material must possess the requisite security clearance.

(b) Members of the public seeking the declassification of DoD documents under the provisions of section 3.5 of Executive Order 13526 will contact the appropriate OSD Component as listed in DoD Manual 5230.30.

(c) Records and information requested by FPA and approved historical researchers will be accessed at a facility under the control of the National Archives and Records Adminis-

tration (NARA), NARA's Archives II in College Park, Maryland, a Presidential library, or an appropriate U.S. military facility or a DoD activity in accordance with Vol 3 of DoD Manual 5200.01, "DoD Information Security Program," February 24, 2012, as amended.

(d) Access to records and information will be limited to the specific records within the scope of the proposed research request over which OSD has authority and to any other records for which the written consent of other agencies with authority has been granted in accordance with Vol 3 of DoD Manual 5200.01, "DoD Information Security Program," February 24, 2012, as amended.

(e) Access to unclassified OSD Component records and information will be permitted consistent with the restrictions of the exemptions of 5 U.S.C. 552(b) (also known and referred to in this part as the "Freedom of Information Act" (FOIA), 32 CFR part 286, §197.5 of this part, and consistent with 32 CFR part 310. The procedures for access to classified information will be used if the requested unclassified information is contained in OSD files whose overall markings are classified.

(f) Except as otherwise provided in DoD Manual 5200.01 volume 3, no person may have access to classified information unless that person has been determined to be trustworthy and access is essential to the accomplishment of a lawful and authorized purpose.

(g) Persons outside the Executive Branch who are engaged in approved historical research projects may be granted access to classified information, consistent with the provisions of Executive Order 13526 and DoD Manual 5200.01 volume 1 provided that the OSD official with classification jurisdiction over that information grants access.

(h) Contractors working for Executive Branch agencies may be allowed access to classified OSD Component files provided the contractors meet all the required criteria for such access as an historical researcher including the appropriate level of personnel security clearance set forth in paragraphs (a) and (i) of this section. No copies of OSD records and information may be released directly to the contractors. The Washington Headquarters Services